

MEMORANDUM

Date: April 2, 2014

TO: Town Commission
THROUGH: Dave Bullock, Town Manager
FROM: Anne Ross, Assistant Town Manager
SUBJECT: Resolution 2014-14, Request from the Colony Beach and Tennis Club Association, Inc. for Extension of Time to Comply with Regulations Governing Nonconforming Uses and Structures

The Town's Zoning Code provides for property owners to file a petition with the Town Commission seeking a time extension for legally nonconforming land use and structures.

Chapter 158.138(B)(8)(b): Removal of nonconformance; extension of time to comply. A nonconforming building or structure not used or occupied in a lawful manner or vacant for a period of one year or more shall be considered an abandonment and the nonconforming building or structure shall be removed or made conforming. However, should the period of nonuse or vacancy be caused by legal restraints upon the owner or lessee, the owner or lessee **may** set forth such grounds in a petition to the town commission and serve such petition on the planning and zoning official. The time **may** be extended by the town commission for good cause shown. The town commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity. [Emphasis Added]

On March 17, 2014 the Colony Beach and Tennis Club Association, Inc. petitioned the Town Commission to extend the current deadline of April 30, 2014 through October 31, 2014 (or to such further time as the Town Commission may deem appropriate under the totality of the circumstances).

Town staff will present an overview of the nonconforming use extension history and a draft resolution for consideration.

Following staff presentations The Colony parties will be provided an opportunity to make presentations regarding their petition.

The agenda materials attached are:

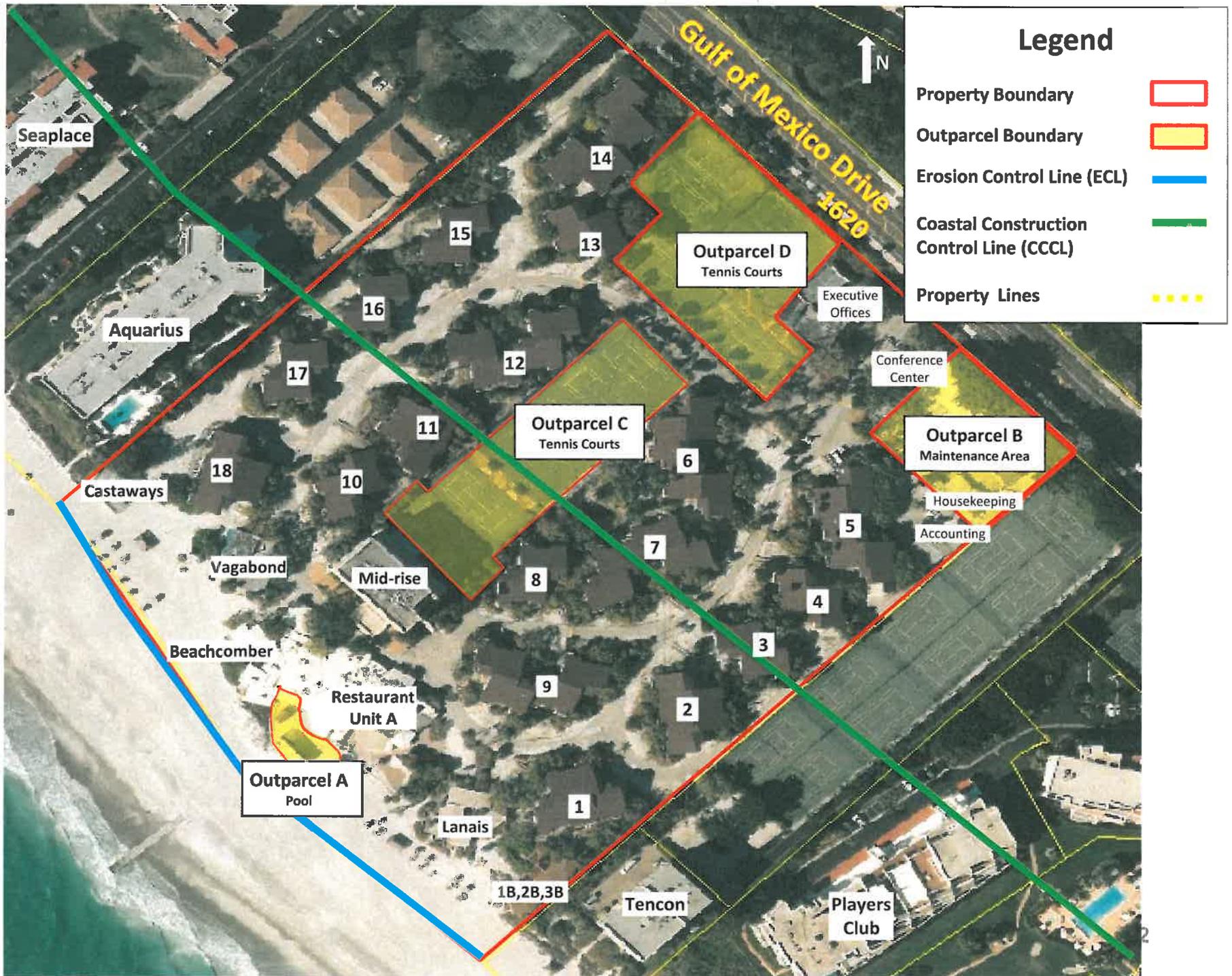
1. Powerpoint Presentation Colony Extension Request
2. Draft Resolution 2014-14
3. Association Submittal Request for Time Extension Dated March 17, 2014

Please don't hesitate to contact me if you have any questions.



COLONY EXTENSION REQUEST

TOWN COMMISSION SPECIAL MEETING
APRIL 7, 2014





“THE CONDOMINIUM PARCEL” OWNERSHIP

- **Colony Beach and Tennis Club Association, Inc.**
 - **Registered Agent: Peter J. Kelly Esq.**
 - **President: Jay Yablon**



“OUT PARCELS” OWNERSHIP

- 1) **Colony Beach & Tennis Club, Inc.**
 - **Registered Agent: Murray J. Klauber**
- 2) **Colony Beach, Inc.**
 - **Registered Agent: Dr. Murray J. Klauber**
- 3) **Colony Lender, LLC**
 - **Registered Agent: David M. Siegal**
- 4) **Breakpointe, LLC**
 - **Registered Agent: Neal A Sivyer**



UNIT A (RESTAURANT) OWNERSHIP

- **Colony Beach, Inc.**
 - **Registered Agent: Dr. Murray J. Klauber**
 - **Currently Under Bankruptcy Proceedings**



NONCONFORMING USE OR STRUCTURE SECTION 158.138(8)(b)

(b) Removal of nonconformance; extension of time to comply. A nonconforming building or structure not used or occupied in a lawful manner or vacant for a period of one year or more shall be considered an abandonment and the nonconforming building or structure shall be removed or made conforming. However, should the period of nonuse or vacancy be caused by legal restraints upon the owner or lessee, the owner or lessee may set forth such grounds in a petition to the town commission and serve such petition on the planning and zoning official. The time may be extended by the town commission for good cause shown. The town commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity [Emphasis Added].



IMPLICATIONS OF LOSING NONCONFORMING STATUS

- **Must Comply with T-6 Zoning (6 Units/Acre)**
 - **103 Units Allowed on 17.3 Acres**
 - **Loss of 134 Units of the Existing 237 Units**



COLONY USE TIMELINE

- **Colony Closed on August 15, 2010**
- **Potentially Abandoned August 15, 2011**
- **Resolution 2011-17 Granted Extension through December 31, 2012**
- **Resolution 2012-07 Second Extension through December 31, 2013**
- **Resolution 2013-39 & 2014-10 Third Extension through April 30, 2014**
- **Association Has Requested Fourth Extension through October 31, 2014**



RESOLUTION 2012-07 CONDITIONS

- **Maintain Vermin and Pest Control Programs**
- **Secure all Unsafe Buildings and Stairways**
- **Restore and Maintain Landscaping and Irrigation Visible to Public at Pre-Shutdown Condition**
- **Requires Development Plan for Re-Opening Within 90 Days of Final Control Determination**
- **Requires \$50,000 Cash Bond to Guarantee Maintenance**



RESOLUTION 2013-39/2014-10 CONDITIONS

- Maintain Vermin and Pest Control Programs
- Secure and Maintain the Structures and Property in Compliance with Town Code, State, and Federal Regulations
- Decommission and Secure the Water and Wastewater System
- Restore and Maintain the Publically Visible Landscaping, Irrigation, and Property
- Requires \$50,000 Cash Bond to Guarantee Maintenance₀



POLICE CALL SUMMARY FOR 1620 GMD

- **From 2010 - March 2014 there have been 36 reports of criminal activity at the Colony**
- **Burglary – 6**
- **Theft – 1**
- **Vandalism - 11**
- **Trespassing- 19**



SECURITY ASSESSMENT RECOMMENDATIONS

MAY 6, 2013

- **Vehicle Gate Installation (Instituted)**
- **Fence Installation on East & West Perimeter of Property (Not Instituted)**
- **Motion Activated Lights and Cameras Installation throughout Property (Not Instituted)**



TRESPASSING COMPLIANCE ISSUE

- **On December 12, 2013, LBK Police arrested 2 suspects for trespassing on the Colony property**
- **The charges were dismissed against the suspects due to the inadequacy of the “No Trespassing” signage on the Property**



MINIMUM SECURITY RECOMMENDATIONS

- **Install an 8 foot Fence around Entire Perimeter of Property**
- **Post “No Trespass” Signs per State Statute 810.011(5)(a)**
 - **“No Trespassing” signs placed not more than 500 feet apart along and at the corners of the boundary of the land in letters no less than 2 inch in height**
 - **Signs shall be clearly noticeable from outside the boundary line**
 - **Signs shall also state the owner of the property**



DRAFT RESOLUTION 2014-14 CONDITIONS

- **Maintain Vermin and Pest Control Programs**
- **Secure and Maintain the Structures and Property in Compliance with Town Code, State, and Federal Regulations**
- **Decommission and Secure the Water and Wastewater System**
- **Restore and Maintain the Publically Visible Landscaping, Irrigation, and Property**



DRAFT RESOLUTION 2014-14 CONDITIONS (CONT.)

- Post the Property for No Trespassing per State Regulation
- Secure the Site with 8 ft Fence around the Entire Perimeter of the Property
- Requires Development Plan for Re-Opening upon Final Control Determination
- Requires Cash Bond to Guarantee Maintenance
- Establishes Procedural Requirements for Town to Draw Upon Cash Bond



COST ESTIMATES

- **Maintain Vermin and Pest Control Programs – Annual Cost Estimated at \$7,000 to \$13,000/year**
- **Perimeter Fencing Costs Estimated at \$27,000 for perimeter of property; \$3,000 to \$4,600 per building; \$6,400 for Restaurant**
- **Demolition Costs Estimated at \$1.2 million for all 30 buildings; \$9,000 to \$45,000 per villa; \$94,000 for Restaurant; \$450,000 for Mid Rise**

RESOLUTION 2014-14

A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING THE REQUEST FOR AN EXTENSION OF THE PERIOD OF TIME A NONCONFORMING USE OR STRUCTURE CAN REMAIN UNUSED OR VACANT WITHOUT LOSING ITS NONCONFORMING STATUS OF THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC., LOCATED AT 1620 GULF OF MEXICO DRIVE, IN ACCORDANCE WITH SECTION 158.138(B)(8)(b) OF THE TOWN OF LONGBOAT KEY ZONING CODE; PROVIDING FOR CONDITIONS; PROVIDING FOR INSEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, at the request of Colony Beach Associates, Ltd., the Town of Longboat Key (the "Town") at a special meeting of the Town Commission on November 21, 1972, approved the plot plan for the development of a 237 unit tourism resort hotel (the "Colony") on the land that consists of approximately 17.3 acres of land, located at 1620 Gulf of Mexico Drive; and

WHEREAS, the zoning of the subject land at the time of the plot plan approval was H-2, which allowed for a maximum density of 14 units per acre of land; and

WHEREAS, the current zoning for the Colony is T-6, allowing up to 6 units per acre; and

WHEREAS, the Town issued a building permit for the construction of the tourism resort hotel on February 20, 1973, and the Colony was subsequently constructed; and

WHEREAS, construction of the Colony occurred prior to current Federal, State, and local Flood Regulations as well as the current State Building Code; and

WHEREAS, on November 30, 1973, approximately 15 acres of the site were submitted to condominium ownership (the "Condominium Parcel"); and

WHEREAS, the remaining approximately 3 acres were not dedicated to condominium ownership (the "Out Parcels"); and

WHEREAS, the Colony Beach and Tennis Club Association, Inc. ("Association") is a not-for-profit corporation formed in 1973 and its membership is made up of the 237 tourist condominium units within the Colony; and

WHEREAS, the owners of 232 of the 237 units entered into a Certificate of Agreement of Limited Partnership (the "Limited Partnership") dated December 27, 1973; and

WHEREAS, beginning in 1973, the Limited Partnership managed the Colony as a condominium resort hotel under the Agreement of Limited Partnership and other agreements; and

WHEREAS, the Limited Partnership filed for Chapter 11 under Federal bankruptcy codes and was converted on August 9, 2010, to Chapter 7 liquidation; and

WHEREAS, the Colony closed on August 15, 2010; and

WHEREAS, the Association was placed in possession and control of the Association property pursuant to the Bankruptcy Court order and final judgment; and

WHEREAS, the Association Board and representatives from the Town met on October 7, 2010, to discuss the future of the tourism resort development; and

WHEREAS, Section 158.138(B)(8)(a) of the Town's Zoning Code provides that a nonconforming use or structure not used for a period of one year shall be considered abandoned and, therefore, all nonconforming uses or structures within the Colony could be deemed abandoned after August 15, 2011; and

WHEREAS, the Association received a number of development proposals and worked diligently with the Town but, by April 2011, it became apparent that multiple legal restraints would prevent the Colony from reopening prior to the time of abandonment under the Town's Zoning Code; and

WHEREAS, the Association, therefore, petitioned the Town for an extension of the one-year period pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code; and

WHEREAS, the owners of the Out Parcels did not object to the requested extension; and

WHEREAS, after a public hearing on May 2, 2011, the Town Commission passed Resolution 2011-17 granting an extension of the abandonment provisions of the Zoning Code until December 31, 2012; and

WHEREAS, on July 27, 2011, the United States District Court for the Middle District of Florida (the "District Court") reversed the Bankruptcy Court's prior final judgments and remanded the matter back to the Bankruptcy Court for further deliberations; and

WHEREAS, the District Court's order raised questions about whether the Partnership or the Association was in control of the Association property and whether the Partnership was entitled to significant damages against the Association; and

WHEREAS, on October 14, 2011, the Association appealed the District Court's orders to the United States Eleventh Circuit Court of Appeals (the "Eleventh Circuit"); and

WHEREAS, on March 2, 2012, the Eleventh Circuit dismissed the appeal without prejudice; and

WHEREAS, on March 26, 2012, the Bankruptcy Trustee filed motions in the Bankruptcy Court seeking to return control of the Association property to the Partnership Trustee; and

WHEREAS, the Association had previously selected a developer of the property but that relationship was terminated in May 2012 after the District Court's and Eleventh Circuit's rulings and the subsequent motion filed by the Bankruptcy Trustee; and

WHEREAS, on July 13, 2012, the Bankruptcy Court conducted a full day hearing on this matter to consider, among other things, whether the Partnership or the

Association should be in control of the Association property and the amount of damages that should be awarded to either party; and

WHEREAS, at the time of the passage of Resolution 2012-07, no orders regarding the remanded issues had been issued by the Bankruptcy Court; and

WHEREAS, any orders issued by the Bankruptcy Court are subject to appeal; and

WHEREAS, the Association believed that the tourism resort could not be redeveloped or reopened in a manner fitting to the resort prior to December 31, 2012; and

WHEREAS, on July 30, 2012, the Association submitted a request for an extension of time to comply with the regulations governing nonconforming uses and structures for the Colony; and

WHEREAS, the owners of the Out Parcels did not object to the request for an extension; and

WHEREAS, the Town Commission granted the Association's request in accordance with Resolution 2012-07; and

WHEREAS, the Association and various other entities having an interest in the Colony remain in bankruptcy with various and multiple contested bankruptcy matters; and

WHEREAS, Resolution 2012-07 granted an extension of time under certain conditions until a final determination was made concerning control of the Colony (the entire site including the Condominium Parcel and Out Parcels) either as a result of pending litigation, In re Colony Beach & Tennis Club Association, Inc., Case No. 8:08-bk-16972-KRM, Adversary Proceeding Nos. 8:08-ap-00567-KRM and 8:08-ap-00568-KRM, In re: Colony Beach & Tennis Club, Ltd., Case No.: 8:09-bk-22611-KRM, Adversary Proceeding No.: 8:10-ap-00242-KRM, or until a negotiated settlement is reached by the parties; and

WHEREAS, no final resolution or settlement has been reached; and

WHEREAS, Resolution 2012-07 is about to expire; and

WHEREAS, the Association and some, but not all, of the entities with an interest in the Colony entered into an agreement to settle and resolve their differences; and

WHEREAS, the Association held a vote of its membership to determine support of the settlement; and

WHEREAS, subsequent bankruptcy filings have requested the Bankruptcy Court enter orders confirming the settlement agreement and bankruptcy plans filed by some of the bankrupt interests within the Colony; and

WHEREAS, Colony Lender, owner of an undivided 15% interest in the Out Parcels and holder of a mortgage on an 80% undivided interest in the Out Parcels has not signed the settlement agreement and has contested approval and confirmation of the settlement agreement and bankruptcy plan; and

WHEREAS, owing to the passage of time and lack of maintenance, the vacant buildings on the Colony property have continued to deteriorate and have become a nuisance, a detriment to the neighborhood and a blight within the Town; and

WHEREAS, the existing buildings are a detriment to the redevelopment of the Colony property; and

WHEREAS, on November 17, 2013, the Association filed a petition to extend the time to maintain its nonconforming ("grandfathered") status; and

WHEREAS, on December 11, 2013, the Town Commission considered the Association's request for a third extension of time to comply with the regulations governing nonconforming uses and structures for the Colony; and

WHEREAS, on December 11, 2013, the Town Commission passed Town Resolution 2013-39 which granted the Association's request to extend the time to maintain its nonconforming grandfathered status until April 30, 2014; and

WHEREAS, on January 11, 2014, the Association filed a Writ of Certiorari in the Twelfth Judicial Circuit Court in and for Sarasota County challenging the amount of the bond set by the Town Commission in Town Resolution 2013-39; and

WHEREAS, the Association and Town agreed to resolve the litigation challenging the amount of the bond set forth in Town Resolution 2013-39; and

WHEREAS, on March 3, 2014, the Town Commission passed Town Resolution 2014-10, amending the bond amount in Town Resolution 2013-39 from Two Hundred Fifty Thousand Dollars (\$250,000) to Fifty Thousand Dollars (\$50,000); and

WHEREAS, on March 17, 2014, the Association filed its fourth petition to extend the time to maintain its nonconforming grandfathered status; and

WHEREAS, the Owners of the Out Parcels did not object to the Association's fourth request for extension for the Town to extend the nonconforming status of the property; and

WHEREAS, the request for the extension is consistent with the provisions of the Zoning Code Section 158.138(B)(8)(b), which allows the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if the nonuse or vacancy is caused by legal restraints upon the owner or lessee; and

WHEREAS, pursuant to Section 158.138(B)(8)(b), the Town Commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity; and

WHEREAS, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be redeveloped or reopened in the future to approximately 85 units, a loss of approximately 152 units, if redevelopment is based on 14.3 acres of land currently controlled by the Association; and

WHEREAS, under single control or ownership, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be

redeveloped or reopened in the future to approximately 103 units, a loss of approximately 134 units, based on 17.3 acres of land; and

WHEREAS, the Town Commission has determined that multiple legal constraints have prohibited the timely redevelopment or reopening of the Colony and deems it in the public interest to grant an extension of the abandonment provision of Section 158.138(B)(8) to provide additional time to redevelop (deleted item) the Colony, subject to the terms and conditions as set forth below; and

WHEREAS, the extension granted herein is for tourism units and uses only as defined by the Town Zoning Code.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The above Whereas clauses are true and correct and are hereby ratified and confirmed.

SECTION 2. The Town Commission, pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code, hereby grants an extension of time to redevelop or use the nonconforming uses at the Colony without being deemed to have abandoned the nonconformities in accordance with Section 158.138(B)(8)(a) as provided below.

SECTION 3. An extension of time to develop the Colony property as a tourism use of 237 grandfathered tourism units is granted until a final determination is made concerning control of the Colony (the entire site including, but not limited to, the Condominium Parcel and the Out Parcels) either as a result of pending litigation, until a negotiated settlement is reached by the parties, or **(Month Day, Year)**, whichever is earlier. The extension is subject to the conditions herein. Within ninety (90) days after the determination of control of the Colony, whoever is determined to be in control shall submit a complete development plan for re-opening the Colony. The development plan shall be in a form acceptable to the Town and shall at a minimum include:

- a) schedules for all phases (planning, financing, design, and construction),
- b) specific time frames for submittal of site plans and building permit applications,
- c) a financing plan, and
- d) a construction plan.

The development plan shall be reviewed by the Town Manager to ensure that it appears to comply with all Federal, State, and local laws as well as whether it appears to be feasible, reasonable, and practical. If not approved by the Town Manager, the Colony shall have thirty (30) days to revise and resubmit its development plan. If the revised development plan is not approved by the Town Manager, the parties shall hold a hearing before the Town Commission in accordance with Section 5 below. Once the development plan is approved by the Town Manager or Town Commission, compliance with it shall become a condition of this extension. The Colony shall also follow the Town's adopted land use approval procedures if applicable to the proposed development plan.

SECTION 4. The Colony shall:

- 1) Maintain vermin and pest control programs reviewed and approved administratively by the Town;
- 2) Secure and maintain the structures and property in compliance with Longboat Key Code of Ordinances, State, and Federal Regulations;
- 3) In anticipation of structure demolition, decommission and secure the potable water and wastewater system to the satisfaction of the Town;
- 4) Restore and maintain the landscaping, irrigation, and property on the portions of its property that are visible to the public and neighbors in a pre-shutdown condition;
- 5) Within 21 days of this Resolution, shall post "No Trespassing" signage on the property, buildings, and accessory structures in accordance with State Statute 810.011(5)(a);
- 6) Within 21 days of this Resolution, shall install an 8 foot fence around the perimeter of the entire Colony property; and
- 7) The Colony shall maintain with the Town a cash bond in the amount of [REDACTED] Thousand Dollars (\$ [REDACTED]), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above. The Colony shall maintain with the Town a cash bond in the amount of [REDACTED] Thousand Dollars (\$ [REDACTED]), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 6 above. Unless additional time is needed by the Association to obtain the total amount of cash bond provided for above, the cash bond shall be provided to the Town no later than May 1, 2014. If additional time is needed for good cause, the Association shall submit a written request for additional time to the Town Manager, submit at least [REDACTED] % of the cash bond to the Town no later than May 1, and provide the Town with a date certain in which the remainder of such cash bond funds will be remitted to the Town. If the cash bond is not provided by the Association by the date certain provided by the Association, then the Town Manager may elect to bring this issue to the Town Commission at a public hearing in accordance with Sections 5 of this Resolution. Nothing herein shall be construed to prevent the Town from drawing on a portion of the cash bond remitted by the Association to the Town.

SECTION 5. If the Colony, the Association, owners of the Out Parcels, or the Town Manager seeks clarification or believes that any of the conditions set forth in Section 4 in this Resolution have not been met, that party may request a public hearing to be held before the Town Commission to determine compliance with the requirements of this Resolution and whether the Town may draw on the cash bond so the Town can cure and eliminate the failings. After receiving all evidence and testimony at the public hearing, if the Town Commission determines that the requirements of this Resolution have not been met, the Town Commission may take all necessary, reasonable and appropriate actions including, but not limited to: (a) authorizing a draw upon the cash

bond, and (b) upon ninety (90) days' notice, terminating all or a portion of the extensions of time granted in sections 2 and 3, above.

SECTION 6. If the Town Manager believes that any of the conditions set forth in Section 4 in this Resolution have not been met, the Town shall be entitled to demand and draw upon the cash bond as follows:

- a) The Town Manager shall provide written notification of the intent to draw upon the cash bond to the Association's president, treasurer and attorney on file with the Town. Said notification shall be provided by email and certified mail, return receipt requested.
- b) The aforementioned notification shall provide the Association a specification of failings in sufficient detail and include corrective action recommendations to comply with the conditions set forth in Section 4 so that the Association is provided an opportunity to cure the failings. An estimated cost for instituting the corrective action(s) shall be included in the notification.
- c) The aforementioned notification shall set forth a reasonable deadline of no less than 10 business days for the Association to cure said failings.
- d) Should the Town Manager determine that the Association has failed to timely cure and eliminate the failings in the aforementioned notification, the parties shall hold a hearing before the Town Commission in accordance with Section 5 above.
- e) Should the Town Commission determine that the Association has continued to fail to cure and eliminate the specified failings, the Town may draw upon the cash bond to the extent of one hundred and twenty-five percent (125%) of the estimated cost of compliance to eliminate the specified failing or failings.
- f) In the event the actual costs of curing and eliminating the failings is less than one hundred and twenty-five percent (125%) of the amount originally estimated and covered by the money drawn from the cash bond, the Town shall return the unused monies to the account containing the cash bond to the extent necessary to replenish the cash bond to the original amount of [REDACTED] Thousand Dollars (\$ [REDACTED]). If the Association has already replenished the cash bond to the original amount of the cash bond, the Town shall return the unused monies to the Association.
- g) The Association shall replenish the cash bond to the original amount of [REDACTED] Thousand Dollars (\$ [REDACTED]) within ten (10) business days after the Town draws upon the cash bond.

SECTION 7. In accordance with the terms of this Resolution, the subject property may be redeveloped and maintained at the existing density of 237 tourism units as tourism units are defined by the Town's Zoning Code, as may be amended.

SECTION 8. The conditions, terms and authorizations set forth in this Resolution are mutually dependent and are inseverable from one another. This Resolution is to be construed as a whole and all sections of this Resolution shall be read and construed together. Accordingly, should any section, condition, or term of this

Resolution be declared invalid, the remainder of this Resolution shall also be invalidated.

SECTION 9. Effective Date. This Resolution shall become effective immediately upon adoption.

Passed by the Town Commission of the Town of Longboat Key on the ___ day of April, 2014.

James L. Brown, Mayor

ATTEST:

Trish Granger, Town Clerk

ATTORNEYS AT LAW

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JORDEN BURT**

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Atlanta
Hartford
Miami
New York
Orlando
St. Petersburg
Tallahassee
Tampa
Washington, DC
West Palm Beach

March 17, 2014

Alaina Ray
Planning, Zoning and Building Director
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228-3196

VIA FEDERAL EXPRESS
and VIA EMAIL aray@longboatkey.org
(email with exhibits)

Subject: 1620 Gulf of Mexico Drive – The Colony
Discontinued Use – Nonconforming Land Use/Structures

Dear Ms. Ray:

Pursuant to Town of Longboat Key Zoning Code 158.138(B)(8)(b), the Colony Beach and Tennis Club Association ("the Association") petitions the Town Commission to extend the time from April 30, 2014, through October 31, 2014 (or to such further time as the Town Commission may deem appropriate under the totality of the circumstances), for the condominium resort units at The Colony, 1620 Gulf of Mexico Drive ("the Colony") to maintain, without question, the "grandfathered status" of the 237 condominium units and existing improvements at the Colony. Enclosed pursuant to your request are 13 paper-copies of the Association's petition.

The Association hereby incorporates, rather than repeats, the facts and arguments in the Association's petitions which gave rise to Town Resolutions 2011-17, 2012-07, and 2013-39, the quarterly reports which have been submitted in accordance with Town Resolution 2012-07, and the Association's report at the Town Commission workshop of October 21, 2013.

The Association's instant petition will concentrate on what the Association has done since Town Resolution 2013-39 was passed December 11, 2013, what "legal restraints" remain or have arisen from the Bankruptcy Court's refusal to approve a global settlement agreement which was designed to eliminate two overriding "legal restraints" precluding the redevelopment of an 18-acre tourism development at the Colony, and what remains to be done prior to submitting plans for an 18-acre tourism redevelopment at the Colony.

Prior to addressing what the Association has done since Resolution 2013-39 was passed December 11, 2013, what "legal restraints" remain precluding the redevelopment of an 18-acre tourism development at the Colony, and what remains to be done prior to submitting plans for an 18-acre tourism redevelopment at the Colony, the Association would advise you that it intends to supplement this petition prior to the public hearing on the extension request, which it understands

may be scheduled for April 7, 2014 (pending Town Commission approval). Supplementing the petition almost certainly will be necessary because there will be ongoing developments between now and April 7, 2014, such as further discussions with possible developers and progress toward the selection of a developer.

On April 13, 2011, the Association—then in possession and control of the Condominium Parcel at the Colony pursuant to the Bankruptcy Court order and final judgment of August 13, 2010—applied to extend the then-existing August 15, 2011, “deadline” to December 31, 2012, for the Association and Unit Owners to rent, use or occupy the condominium resort units at the Colony in order to maintain their “grandfathered” status. Town Code 158.138 provides that “should the period of nonuse or vacancy be caused by legal restraints upon the owner. . . , the owner. . . may set forth such grounds in a petition to the Town Commission,” and “[t]he time may be extended by the Town Commission for good cause shown. . . .”

At the Town Commission hearing on May 2, 2011, the Town Commission granted the extension, finding that the Association “has diligently worked with the Town in good faith for the past six months with the goal of reopening the Colony,” that extending the deadline from August 15, 2011, through December 31, 2012, “is consistent with Zoning Code Section 158.138(B)(8)(b), which allows the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if the nonuse or vacancy is caused by legal restraints upon the owner or lessees,” and that “multiple legal constraints have prohibited the timely redevelopment or reopening of the Colony, and [that the Town Commission] deems it in the public interest to extend the one year abandonment period. . . to provide the Association time to redevelop or reopen the Colony.” The Town Commission granted the extension to December 31, 2012, with the explicit recognition that there may be need for further extensions beyond December 31, 2012. The Town Commission indicated that a hearing would be held in March 2012 “to evaluate progress made. . . in recognition that an additional extension of time may be requested.” The Town Commission specified that “[a]ny additional extension must be acted upon prior to December 31, 2012.”

Subsequent to May 2, 2011, additional unforeseen “legal restraints” arose which precluded the Colony from resuming first-class rental operations prior to December 31, 2012, to wit, the United States District Court for the Middle District of Florida (“the District Court”) on July 27, 2011, reversed a bankruptcy court final judgment of November 9, 2009, and on October 12, 2011, remanded certain proceedings to the Bankruptcy Court for the Middle District of Florida (“the Bankruptcy Court”). The District Court’s orders of July 27, 2011, and of October 12, 2011, raised questions concerning whether the Partnership, on the one hand, or the Association and Unit Owners, on the other hand, have the right to possess and control the 15-acre Condominium Parcel at the Colony and raised the prospect of a damage award in excess of \$20 million against the Association, all of which effectively precluded financing the rehabilitation or redevelopment of the Colony pending further legal determinations or resolution among the parties.

On July 27, 2012, the Association filed a petition to extend the December 31, 2012, “deadline” to June 30, 2014.

At the Town Commission hearing on October 1, 2012, the Town Commission passed Town Resolution 2012-07 granting the Association an extension "until a final determination is made concerning control of the Colony (the entire site including the Condominium Parcel and Out Parcels) either as a result of pending litigation, In re Colony Beach & Tennis Club Association, Inc., Case No. 8:08-bk-16972-KRM, Adversary Proceeding Nos. 8:08-ap-00567 and 8:08-ap-00568-KRM, In re: Colony Beach & Tennis Club, Ltd., Case No. 8:09-bk-22611-KRM, Adversary Proceeding No. 8:10-ap-00242-KRM, or until a negotiated settlement is reached by the parties. . . ." Town Resolution 2012-07 also provided that "if final determination of control of the entire Colony site. . . is not reached on or before December 31, 2013, this extension shall terminate unless further extended by the Town Commission after a properly noticed and advertised public hearing."

Because no "final determination of control of the entire Colony site" was made, the Association on November 17, 2013, petitioned the Town to extend the "deadline" in Town Resolution 2012-07 from December 31, 2013, through September 30, 2014, with the anticipation that the Bankruptcy Court would approve a "global settlement agreement" with the Klauber-related entities which would eliminate the "legal restraints" of the multi-million dollar judgment and would combine the four outparcels totaling approximately three acres with the 15-acre condominium to permit a unified 18-acre development. A copy of the Association's petition of November 17, 2013, is attached as Exhibit A hereto.

On December 11, 2013, the Town Commission passed Town Resolution 2013-39, which extended the deadline from December 31, 2013, through April 30, 2014, in light of The Town Commission's "determin[ation] that multiple constraints have prohibited the timely redevelopment or reopening of the Colony" and that "it is in the public interest to grant an extension of the abandonment provision of Section 158.138(B)(8) to provide additional time to redevelop the Colony. . . ." A copy of Town Resolution 2013-39 is attached as Exhibit B hereto.

Unfortunately, although the Bankruptcy Court on February 25, 2014, determined that the "global settlement" was fair and reasonable, the Bankruptcy Court also determined that the plan of reorganization for the Klauber-related entities could not be confirmed over the objections of Colony Lender, LLC. The Bankruptcy Court, therefore, was unable to approve the global settlement which would have eliminated the "legal restraints" of the multi-million judgment and which would have united the four outparcels totaling 2.3 acres with the 15-acre condominium property to permit a unified development to proceed. The Bankruptcy Court was unable to approve any part of the "global settlement," including the transfer of the 2.3 acres to the Association, because the global settlement agreement was tied to confirmation of a plan of reorganization for Colony Beach, Inc., for Colony Beach & Tennis Club, Inc., and for Resorts Management, Inc.

The Association, however, is continuing to pursue options which would result in redeveloping the Colony as a first-class resort and is engaged in very active discussions with a developer, who would pursue development options notwithstanding the existing circumstances.

The Association, though, needs more time to finalize and to obtain approval of a development agreement.

Notwithstanding the Association's attempts to select a suitable development partner, the continuing legal uncertainty concerning control of the Out Parcels has significantly complicated obtaining a development agreement with a development partner. Among the "legal restraints" are the legal vacuum created when the Partnership ceased operations and was liquidated leaving the condition of the units in a state of disrepair and unsuitable for occupancy. Adding to the "legal restraints" is the present circumstance that the Unit Owners, members of the Association, are no longer required by the partnership agreement to make their units available for tourism use by the Partnership. The Association lacks authority to operate a hotel or resort. Accordingly, the Association has been diligently seeking, and continues to seek, a development partner acceptable to the Unit Owners to lead in the creation of a new structure for the operation of a successful first-class resort at the Colony.

In addition to the legal restraints on controlling the Out Parcels and in addition to the legal restraints stemming from the lack of a development agreement and a development partner, another legal restraint exists. The circuit court for Sarasota County has invalidated certain provisions in the Town's zoning/development code which permit the Town to grant "departures" from standards which would otherwise apply in approving outline development plans ("ODP's"). The Town presently remains unable to grant such "departures." Town staff and consultants have drafted amendments to the zoning code which are designed to permit the Town to once again grant departures in approving ODPs to permit developments, such as the redevelopment of the Colony, to proceed. We understand from Town staff that the Town Planning and Zoning Board (PZB) is expected to consider the proposed amendments in March 2014 with the Town Commission thereafter considering the proposed amendments in April 2014.

Refusing to extend the "deadline" of April 30, 2014, and declaring that the Colony no longer has "grandfathered" rights to the 237 condominium units would undercut the voters' overwhelming referendum vote to increase tourism units in Longboat Key and would detriment ambience, commercial activity, other tourism establishments, and the economy in Longboat Key and neighboring jurisdictions.

There is no public interest in attempting to eliminate the Colony's "grandfathered" density. Indeed, such elimination would be contrary to the public interest. If the "grandfathered" status were eliminated, the Town would lose up to 147 units which have traditionally been used for tourism (237 "grandfathered" tourism units minus 90 tourism units which would be permitted if there were no "grandfathering").

Voters within the Town of Longboat Key voted 81 percent in the March 2008 referendum to authorize an ordinance which would create a pool of 250 additional tourism units which could be allocated within the Town to help make up for the loss of approximately 250 tourism units earlier in the 2000s. In placing the allocation of 250 tourism units on the referendum, the Town

was concerned about the loss in vitality and economic activity inherent in the reduction of tourism units within Longboat Key.

The March 2008 referendum stemmed from a year-long visioning plan the Town Planning and Zoning Board ("PZB") undertook.

Underlying the 81 percent vote to add 250 tourism units within Longboat Key was the voters' recognition of the economic importance of tourism, such as one resident would express in the Longboat Observer of February 22, 2012. "Since the teardown of the Holiday Inn and the demise of the Colony, the tourist crowd has dwindled by tens of thousands. That's business up and down the Key."

Subsequent to the referendum, the referendum subcommittee for the PZB held various hearings concerning drafting an ordinance to implement the referendum. The draft cover letter of the chairman of the PZB to the Town Commission of June 10, 2008, noted that

"[t]he need to facilitate the restoration/redevelopment of some of our aging. . . tourism properties was initially established in the visioning process and confirmed in the overwhelming voter support for the referenda questions. In particular maintaining and/or restoring the historic tourism of the Town of Longboat Key is considered to be in furtherance of the health, safety, and general welfare of the citizens of Longboat Key." It was determined that historic tourism has helped establish and maintain a level of commercial enterprise which might not otherwise exist and which makes Longboat Key unique, has added greatly to the convenience and lifestyle of our citizens and visitors, and has helped establish and maintain property values because of that lifestyle and because it provides a constant stream of potential buyers."

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As late as February 7, 2011, the Town Commission adopted an updated vision plan (Town Resolution 2011-13). The updated vision plan noted that

"[t]he Town's major resorts are over 20 years old and showing their age. . . . The Colony Beach and Tennis Resort is currently in a state of flux and the property is in need of revitalization or redevelopment. . . . The number of units devoted exclusively to tourism use has decreased as resort operators have found the economics of operating in a highly seasonal environment difficult to sustain."

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"Longboat Key has recently had a reasonable balance of residential, tourism and commercial land uses such that we are not trying to reinvent the wheel or establish totally new segments. The Town is working to. . . reinvigorate the community before any further significant decline occurs. . . . Current and future tourism developments generate a greater need for retail businesses and services than could otherwise be supported, provide future places to stay for visiting relatives."

Further, the updated vision plan noted that

"tourism is an important part of the economy which supports retail services, real estate and restaurants, beach renourishment and other quality of life features of the Town. Many LBK residents came to Longboat Key as tourists or visitors. Tourism is part of the Town's history. This plan proposes that it continue to be part of the future. . . Residents benefit by having tourists on the island."

As for the Colony in particular, persons occupying units at the Colony help support businesses on Longboat Key and neighboring jurisdictions. Many persons who have rented units at the Colony have purchased homes within Longboat Key and neighboring jurisdictions.

Any loss of units available for tourism use at the Colony is certainly not in the public interest when the Town's voters, the Town's PZB, and the Town Commission have consistently and overwhelmingly recognized that the loss of units available for tourism use within Longboat Key is not only not in the public interest, but is a major problem. Rather, the voters, the Town's PZB, and the Town Commission have recognized that tourism use inures to, and is fundamental to, the Town's ambience and economic vitality. The loss of approximately 147 tourism units at the Colony would effectively undercut the voters' decision in the March 2008 referendum and the Town Commissioners' enactment in May 2009 of LBK Code 158.180 to add 250 tourism units within Longboat Key into one that would net only approximately 103 additional tourism units. The loss of approximately 147 tourism units would be contrary to the manifest public interests of Longboat Key as expressed by the voters, would be contrary to the expressed views of Town Commissioners and other Town leaders, and would defy common sense.

The Association is willing to continue to maintain the appearance of the Colony along Gulf of Mexico Drive and along its borders in order to minimize or avoid any adverse affects on the Colony's neighbors and on the Town's residents and visitors during the time extension. Further, the Association is willing to respond with all due diligence to any specific issues on the condominium property which the Town may bring to the Association's attention from time to time.

Eliminating 147 existing tourism units at the Colony would almost inevitably involve further complex, costly, time-consuming, avoidable and unnecessary litigation, and would be unfair to the individual Unit Owners who have invested in the Colony, and have paid taxes to the Town.

Deeming the "grandfathered" condominium units "abandoned" also would create almost unimaginably thorny problems for the 237 fee simple Unit Owners at the Colony, which problems would inevitably spill over to the Town and easily become the subject of even more costly, time-consuming, avoidable, and unnecessary litigation.

Indeed at the discussion concerning the Colony at the Town Commission meeting of July 2, 2012, various commissioners and Town staff recognized the unfairness the "legal restraints" have imposed on the Unit Owners. One commissioner, for example, pointed out that it would be a "big deal" to the Unit Owners to "lose 130-odd units" at the Colony. Another commissioner, as

another example, pointed out that Unit Owners may be "dead" prior to the court system resolving the "legal restraints."

Length of extension.

In light of the highly unusual real estate and legal relationships at the Colony, in light of the complexities of bringing a developer on-board under the existing circumstances, and in light of the Town's present inability to grant "departures" which are inevitably necessary for complex developments such as the Colony, it is clear that it will take a considerable amount of time to reopen the Colony as a first-class resort which would be a credit to the Town of Longboat Key. The Association, however, is making a more modest request, extending the deadline in Town Resolution 2013-39 six months from April 30, 2014, through October 31, 2014, or to such further time as the Town Commission may deem appropriate under the totality of the circumstances. The modest extension is intended to keep pressure on all the interests to resolve the still-present "legal restraints" as quickly as possible. The Association also would be willing to continue to provide periodic status updates to the Town during the time extension.

Conclusion. The Town Commission should grant the Association's application to extend the "deadline" of April 30, 2014, in Town Resolution 2013-39 through October 31, 2014 (or to such further time as the Town Commission deems appropriate under the circumstances).

The Association certainly appreciates the frustration the Town has voiced concerning the delay in reopening a first-class resort at the Colony. But the Association would point out that its 237 Unit Owners also are frustrated because the "legal restraints" at the Colony have precluded the Unit Owners from personally using their units and from obtaining economic benefits from their units being used for tourism uses for more than three years (while at the same time being assessed substantial monies into the millions of dollars to maintain, preserve development rights, and plan and implement a first-class rehabilitation or redevelopment at the Colony). Let me assure the Town that the Association and the owners of the 237 tourism units will continue to do whatever they can to expedite the rehabilitation, redevelopment, and reopening of the first-class resort at the Colony.

Thank you for the consideration you, your staff, the Town Manager, the Town Attorney, and the Town Commission will provide this petition to extend the "deadline" of April 30, 2014, in Town Resolution 2013-39 through October 31, 2014.

If you or anyone at the Town has any questions or concerns, or I can provide any further assistance in expediting the Town Commission's consideration of this request to extend the time,

Alaina Ray, AICP
March 17, 2014
Page 8

please let me know. I can be reached at 813-229-4101 (direct), 813-205-1735 (cell), or dhemke@cfjblaw.com.

Very truly yours,



Donald E. Hemke

Copy furnished:

Dave Bullock, Town Manager (via dbullock@longboatkey.org) (email with exhibits)
Anne Ross, Assistant Town Manager (via aross@longboatkey.org) (email with exhibits)
Maggie Mooney-Portale, Town Attorney (via mmooney@swflgovlaw.com) (email with exhibits)
Jay Yablon, President, Colony Beach and Tennis Club Association, Inc. (via jyablon@nycap.rr.com) (email with exhibits)
Jeffrey Warren, Attorney for the Association (via jwarren@bushross.com) (email with exhibits)
Charles J. Bartlett, Attorney for the Klauber-related interests (via cbartlett@icardmerrill.com) (email with exhibits)
Morgan R. Bentley, Attorney for Fields Trust (via mbentley@bentlyandbruning.com) (email with exhibits)
David M. Siegal, Attorney for Colony Lender (via dsiegal@assafandsiegal.com) (email with exhibits)
Robert C. Goodrich, Attorney for Breakpointe (via Robert.goodrich@stites.com) (email with exhibits)

Donald E. Hemke
813-229-4101 Direct Dial
dhemk@carltonfields.com

November 17, 2013

Alaina Ray
Acting Planning, Zoning and Building Director
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228-3196

VIA FEDERAL EXPRESS
and VIA EMAIL aray@longboatkey.org
(email with exhibits)

Subject: 1620 Gulf of Mexico Drive – The Colony
Discontinued Use – Nonconforming Land Use/Structures

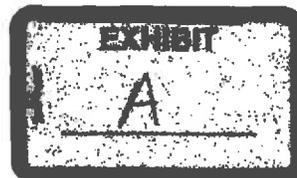
Dear Ms. Ray:

Pursuant to Town of Longboat Key Zoning Code 158.138(B)(8)(b), the Colony Beach and Tennis Club Association ("the Association") petitions the Town Commission to extend the time from December 31, 2013, through September 30, 2014 (or to such further time as the Town Commission may deem appropriate under the totality of the circumstances), for the condominium resort units at The Colony, 1620 Gulf of Mexico Drive ("the Colony") to maintain, without question, the "grandfathered status" of the 237 condominium units and existing improvements at the Colony.

The Association hereby incorporates, rather than repeats, the facts and arguments in the Association's petitions which gave rise to Town Resolutions 2011-17 and 2012-07, the quarterly reports which have been submitted in accordance with Town Resolution 2012-07, and the Association's report at the Town Commission workshop of October 21, 2013.

The Association's instant petition will concentrate on what the Association has done since Town Resolution 2012-07 was passed October 1, 2012, what "legal restraints" remain precluding the redevelopment of an 18-acre tourism development at the Colony, and what remains to be done prior to submitting plans for an 18-acre tourism redevelopment at the Colony.

Prior to addressing those issues, the Association would represent that the Bankruptcy Trustee, the Klauber-related entities (which currently own an undivided 80 percent interest in the



Out Parcels¹ at 1620 Gulf of Mexico Drive), and Breakpointe, LLC (which owns an undivided five percent interest in the Out Parcels), have authorized the Association to represent in this petition that they have no objection to the Town Commission granting the Association's petition to extend the "deadline" of December 31, 2013, in Town Resolution 2012-07 through September 30, 2014. The Association also would note that Colony Lender, LLC (which owns an undivided 15 percent interest in the Out Parcels at 1620 Gulf of Mexico Drive, which holds a mortgage on the Klauber-related entities' 80 percent undivided interest in the Out Parcels, and which holds a mortgage on other Klauber-related entities' interests at the Colony), provided a letter at the Town Commission workshop of October 21, 2013, indicating that it, too, had no objection to extending the deadline of December 31, 2013 in Town Resolution 2012-07.

Also prior to addressing what the Association has done since Resolution 2012-07 was passed October 1, 2012, what "legal restraints" remain precluding the redevelopment of an 18-acre tourism development at the Colony, and what remains to be done prior to submitting plans for an 18-acre tourism redevelopment at the Colony, the Association would advise you that it intends to supplement this petition prior to the public hearing on the extension request, which it understands is being scheduled for December 11, 2013. Supplementing the petition almost certainly will be necessary because there will be ongoing developments between now and December 11, 2013, such as the completion of Unit Owners' voting on approval of the global settlement agreement described below, bankruptcy court hearings and possible determinations, further attempts to resolve differences with Colony Lender, and further discussions with possible developers and progress toward a development agreement.

Introduction.

On April 13, 2011, the Association—then in possession and control of the Condominium Parcel at the Colony pursuant to the Bankruptcy Court order and final judgment of August 13, 2010—applied to extend the then-existing August 15, 2011, "deadline" to December 31, 2012, for the Association and Unit Owners to rent, use or occupy the condominium resort units at the Colony in order to maintain their "grandfathered" status. Town Code 158.138 provides that "should the period of nonuse or vacancy be caused by legal restraints upon the owner. . . , the owner. . . may set forth such grounds in a petition to the Town Commission," and "[t]he time may be extended by the Town Commission for good cause shown. . . ." A copy of the Association's petition of April 13, 2011, is attached as Exhibit A hereto.

At the Town Commission hearing on May 2, 2011, the Town Commission granted the extension, finding that the Association "has diligently worked with the Town in good faith for the past six months with the goal of reopening the Colony," that extending the deadline from August 15, 2011, through December 31, 2012, "is consistent with the zoning code Section 158.138(B)(8)(b), which allows the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if the nonuse or vacancy is caused by legal restraints upon the owner or lessees," and that "multiple legal constraints have prohibited

¹Capitalized terms that are not otherwise defined shall have the meaning ascribed to such terms in Resolution 2012-07.

the timely redevelopment or reopening of the Colony, and [that the Town Commission] deems it in the public interest to extend the one year abandonment period. . .to provide the Association time to redevelop or reopen the Colony." The Town Commission granted the extension to December 31, 2012, with the explicit recognition that there may be need for further extensions beyond December 31, 2012. The Town Commission indicated that a hearing would be held in March 2012 "to evaluate progress made. . .in recognition that an additional extension of time may be requested." The Town Commission specified that "[a]ny additional extension must be acted upon prior to December 31, 2012." A copy of Town Resolution 2011-17 granting the extension through December 31, 2012, is attached as Exhibit B hereto.

Subsequent to May 2, 2011, additional unforeseen "legal restraints" arose which precluded the Colony from resuming first-class rental operations prior to December 31, 2012, to wit, the United States District Court for the Middle District of Florida ("the District Court") on July 27, 2011, reversed a bankruptcy court final judgment of November 9, 2009, and on October 12, 2011, remanded certain proceedings to the Bankruptcy Court for the Middle District of Florida ("the Bankruptcy Court"). The District Court's orders of July 27, 2011, and of October 12, 2011, raised questions concerning whether the Partnership, on the one hand, or the Association and Unit Owners, on the other hand, have the right to possess and control the 15-acre Condominium Parcel at the Colony and raised the prospect of a damage award in excess of \$20 million against the Association, all of which effectively precluded financing the rehabilitation or redevelopment of the Colony pending further legal determinations or resolution among the parties.

On July 27, 2012, the Association filed a petition to extend the December 31, 2012, "deadline" to June 30, 2014. A copy of the Association's petition of July 27, 2012, is attached as Exhibit C hereto.

At the Town Commission hearing on October 1, 2012, the Town Commission passed Town Resolution 2012-07 granting the Association an extension "until a final determination is made concerning control of the Colony (the entire site including the Condominium Parcel and Out Parcels) either as a result of pending litigation, In re Colony Beach & Tennis Club Association, Inc., Case No. 8:08-bk-16972-KRM, Adversary Proceeding Nos. 8:08-ap-00567 and 8:08-ap-00568-KRM, In re: Colony Beach & Tennis Club, Ltd., Case No. 8:09-bk-22611-KRM, Adversary Proceeding No. 8:10-ap-00242-KRM, or until a negotiated settlement is reached by the parties. . . ." Notwithstanding best efforts, no final determination has been made. Town Resolution 2012-07 also provided that "if final determination of control of the entire Colony site. . .is not reached on or before December 31, 2013, this extension shall terminate unless further extended by the Town Commission after a properly noticed and advertised public hearing." A copy of Town Resolution 2012-07 is attached as Exhibit D hereto.

As will be pointed out below, there has been no "final determination of control of the entire Colony site," thus the Association is petitioning to extend the "deadline" in Town Resolution 2012-07.

Now, the details concerning the efforts toward a "final determination of control of the entire Colony site."

Pending Unit Owners' approval of settlement with the Klauber-related entities transferring the Ownership of the Out Parcels to the Association. As the Town has been advised, the Association has entered into a global settlement agreement with William Maloney, as Chapter 7 Trustee for Colony Beach & Tennis Club, Inc., Colony Beach & Tennis Club, Inc., a debtor-in-possession, Colony Beach, Inc., a debtor-in-possession, Resorts Management, Inc., a debtor-in-possession, Colony Investors, Inc., Dr. Murray J. Klauber and Katherine Klauber Moulton, resolving all claims, appeals, and disputes. The global settlement agreement also would transfer the ownership of the Out Parcels, to the Association. Because the Association is proposing to acquire units and real property, the global settlement agreement is being subjected to a vote of the Association's members. On or about October 25, 2013, the Association mailed the ballots to the Unit Owners with the goal of having the ballots returned to the Association by November 18, 2013, prior to the continuation of the bankruptcy hearings, which will be referenced in the immediately-following paragraph.

Pending bankruptcy court approval of the settlement agreement. The Association and other parties to the global settlement agreement have sought approval of the settlement and related transactions by the bankruptcy court presiding over the pending Chapter 11 cases of the Klauber-related entities, the Chapter 7 case of the former partnership that operated the resort at the Colony, and the confirmed Chapter 11 case of the Association. The hearings on the approval motions have been scheduled for November 22, 2013 beginning at 9:00 a.m.

Pending attempts to resolve objections of Colony Lender to the settlement agreement. As noted above, the settlement agreement provides that the Out Parcels and other properties will be transferred to the Association in accordance with the goal in Town Resolution 2012-07 that the "entire site including the Condominium Parcel and the Out Parcels" be under common control. The settlement agreement utilizes the authority and power of the bankruptcy court to accomplish this action, without the express consent of all of the owners of undivided interests in the Out Parcels, including Colony Lender. Under the settlement agreement Colony Lender will receive either (i) a cash payment on the Closing Date or such other consideration agreed to by the Association, the Association's development partner and Colony Lender, or (ii) such amounts as determined under applicable law to be fair and reasonable. Colony Lender has objected to the settlement agreement and is in fact the only serious objecting party.² The Association has not been able to reach agreement with Colony Lender, but is making efforts to reach a resolution without delaying the process for a selection of a development partner. The serious development partners in discussions with the Association have all expressed a willingness to fund a reasonable resolution with Colony Lender. If a negotiated settlement cannot be reached with Colony Lender, the Association and other parties to the settlement agreement will seek approval over the objection of Colony Lender.

² The Fields Trust has some shared interest with Colony Lender in the claims being resolved by the settlement agreement and has also objected to the settlement agreement.

Pending attempts to resolve concerns of Breakpointe based upon its five percent undivided interest in the Out Parcels. The Association, through its counsel, and Breakpointe, through its counsel, have been seeking an amicable resolution of the consideration to be received by Breakpointe for its five percent undivided interest in the Out Parcels. Breakpointe has filed a protective objection to the settlement agreement while these negotiations continue.

Pending efforts at a new development agreement. Notwithstanding the Association's attempts to select a suitable development partner, the continuing legal uncertainty concerning control of the Out Parcels has significantly complicated obtaining a development agreement with a development partner. Among the "legal restraints" are the legal vacuum created when the Partnership ceased operations and was liquidated leaving the condition of the units in a state of disrepair and unsuitable for occupancy. Adding to the "legal restraints" is the present circumstance that the Unit Owners, members of the Association, are no longer required by the partnership agreement to make their units available for tourism use by the Partnership. The Association lacks authority to operate a hotel or resort. Accordingly, the Association has been diligently seeking, and continues to seek, a development partner acceptable to the Unit Owners to lead in the creation of a new structure for the operation of a successful first-class resort at the Colony. In May 2013, the Association entered into a letter of intent with a selected developer and granted that proposed developer an exclusive right for a period of time to put together a development agreement. When it appeared to the Association that insufficient progress was being made to justify an extension of the exclusivity granted this developer, the Association terminated the letter of intent and reopened the process of selecting a suitable development partner. There are currently several proposed suitable development partners under serious consideration.

Pending revisions to Town development/zoning code. In addition to the legal restraints on controlling the Out Parcels and in addition to the legal restraints stemming from the lack of a development agreement and a development partner, another legal restraint exists. The circuit court for Sarasota County has invalidated certain provisions in the Town's zoning/development code which permit the Town to grant "departures" from standards which would otherwise apply in approving outline development plans ("ODP's"). Throughout most of 2013, the Town has been unable to grant such "departures." Town staff and consultants are presently drafting amendments to the zoning code which are designed to permit the Town to once again grant departures in approving ODPs to permit developments, such as the redevelopment of the Colony, to proceed. We understand from Town staff that the Town Planning and Zoning Board (PZB) is expected to consider the proposed amendments in February 2014 with the Town Commission thereafter considering the proposed amendments in March or April 2014.

Refusing to extend the "deadline" of December 31, 2013, and declaring that the Colony no longer has "grandfathered" rights to the 237 condominium units would undercut the voters' overwhelming referendum vote to increase tourism units in Longboat Key and would detriment ambience, commercial

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The Association is willing to continue to maintain the appearance of the Colony along Gulf of Mexico Drive and along its borders in order to minimize or avoid any adverse affects on the Colony's neighbors and on the Town's residents and visitors during the time extension. Further, the Association is willing to respond with all due diligence to any specific issues on the condominium property which the Town may bring to the Association's attention from time to time.

Eliminating 147 existing tourism units at the Colony would almost inevitably involve further complex, costly, time-consuming, avoidable and unnecessary litigation, and would be unfair to the individual Unit Owners who have invested in the Colony, and have paid taxes to, the Town.

Deeming the "grandfathered" condominium units "abandoned" also would create almost unimaginably thorny problems for the 237 fee simple Unit Owners at the Colony, which problems would inevitably spill over to the Town and easily become the subject of even more costly, time-consuming, avoidable, and unnecessary litigation.

Indeed at the discussion concerning the Colony at the Town Commission meeting of July 2, 2012, various commissioners and Town staff recognized the unfairness the "legal restraints" have imposed on the Unit Owners. One commissioner, for example, pointed out that it would be a "big deal" to the Unit Owners to "lose 130-odd units" at the Colony. Another commissioner, as another example, pointed out that Unit Owners may be "dead" prior to the court system resolving the "legal restraints."

Length of extension.

In light of the highly unusual real estate and legal relationships at the Colony, in light of the ongoing litigation, in light of the ongoing vote to approve the settlement agreement, in light of the presently-scheduled hearings in bankruptcy court, in light of the complexities of bringing a developer on-board with the approval of the Unit Owners for a multi-million dollar rehabilitation and/or redevelopment, and in light of the Town's present inability to grant "departures" which are inevitably necessary for complex developments such as the Colony, it is clear that it will take a considerable amount of time to reopen the Colony as a first-class resort which would be a credit to the Town of Longboat Key. The Association, however, is making a more modest request, extending the deadline in Town Resolution 2012-07 nine months from December 31, 2013, through September 30, 2014, or to such further time as the Town Commission may deem appropriate under the totality of the circumstances. The modest extension is intended to keep pressure on all the interests to resolve the still-present "legal restraints" as quickly as possible. The Association also would be willing to continue to provide periodic status updates to the Town during the time extension.

Conclusion. The Town Commission should grant the Association's application to extend the "deadline" of December 31, 2013, in Town Resolution 2012-07 through September 30, 2014 (or to such further time as the Town Commission deems appropriate under the circumstances).

The Association certainly appreciates the frustration the Town has voiced concerning the delay in reopening a first-class resort at the Colony. But the Association would point out that its 237 Unit Owners also are frustrated because the "legal restraints" at the Colony have precluded the Unit Owners from personally using their units and from obtaining economic benefits from their units being used for tourism uses for more than three years (while at the same time being assessed substantial monies into the millions of dollars to maintain, preserve development rights, and plan

Alaina Ray, AICP
November 17, 2013
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and implement a first-class rehabilitation or redevelopment at the Colony). Let me assure the Town that the Association and the owners of the 237 tourism units will continue to do whatever they can to expedite the rehabilitation, redevelopment, and reopening of the first-class resort at the Colony.

Thank you for the consideration you, your staff, the Town Manager, the Town Attorney, and the Town Commission will provide this petition to extend the "deadline" of December 31, 2013, in Town Resolution 2012-07 through September 30, 2014.

If you or anyone at the Town has any questions or concerns, or I can provide any further assistance in expediting the Town Commission's consideration of this request to extend the time, please let me know. I can be reached at 813-229-4101 (direct), 813-205-1735 (cell), or dhemk@carltonfields.com.

Very truly yours,

Donald E. Hemke

Copy furnished:

Dave Bullock, Interim Town Manager (via dbullock@longboatkey.org) (email with exhibits)
Anne Ross, Assistant Town Manager (via aross@longboatkey.org) (email with exhibits)
Maggie Mooney-Portale, Town Attorney (via mmooney@swflgovlaw.com) (email with exhibits)
David Persson, Acting Town Attorney (via dpersson@swflgovlaw.com) (email with exhibits)
Jay Yablon, President, Colony Beach and Tennis Club Association, Inc. (via jyablon@nycap.rr.com) (email with exhibits)
Jeffrey Warren, Attorney for the Association (via jwarren@bushross.com) (email with exhibits)
Charles J. Bartlett, Attorney for the Klauber-related interests (via cbartlett@icardmerrill.com) (email with exhibits)
Morgan R. Bentley, Attorney for Fields Trust (via mbentley@bentlyandbruning.com) (email with exhibits)
David M. Siegal, Attorney for Colony Lender (via dsiegal@assafandsiegal.com) (email with exhibits)
Robert C. Goodrich, Attorney for Breakpointe (via Robert.goodrich@stites.com) (email with exhibits)

RESOLUTION 2013-39

A RESOLUTION OF THE TOWN OF LONGBOAT KEY, FLORIDA, GRANTING THE REQUEST FOR AN EXTENSION OF THE PERIOD OF TIME A NONCONFORMING USE OR STRUCTURE CAN REMAIN UNUSED OR VACANT WITHOUT LOSING ITS NONCONFORMING STATUS OF THE COLONY BEACH AND TENNIS CLUB ASSOCIATION, INC., LOCATED AT 1620 GULF OF MEXICO DRIVE, IN ACCORDANCE WITH SECTION 158.138(B)(8)(b) OF THE TOWN OF LONGBOAT KEY ZONING CODE; PROVIDING FOR CONDITIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, at the request of Colony Beach Associates, Ltd., the Town of Longboat Key (the "Town") at a special meeting of the Town Commission on November 21, 1972, approved the plot plan for the development of a 237 unit tourism resort hotel (the "Colony") on the land that consists of approximately 17.3 acres of land, located at 1620 Gulf of Mexico Drive; and

WHEREAS, the zoning of the subject land at the time of the plot plan approval was H-2, which allowed for a maximum density of 14 units per acre of land; and

WHEREAS, the current zoning for the Colony is T-6, allowing up to 6 units per acre; and

WHEREAS, the Town issued a building permit for the construction of the tourism resort hotel on February 20, 1973, and the Colony was subsequently constructed; and

WHEREAS, construction of the Colony occurred prior to current Federal, State, and local Flood Regulations as well as the current State Building Code; and

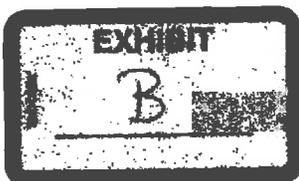
WHEREAS, on November 30, 1973, approximately 15 acres of the site were submitted to condominium ownership (the "Condominium Parcel"); and

WHEREAS, the remaining approximately 3 acres were not dedicated to condominium ownership (the "Out Parcels"); and

WHEREAS, the Colony Beach and Tennis Club Association, Inc. ("Association") is a not-for-profit corporation formed in 1973 and its membership is made up of the 237 tourist condominium units within the Colony; and

WHEREAS, the owners of 232 of the 237 units entered into a Certificate of Agreement of Limited Partnership (the "Limited Partnership") dated December 27, 1973; and

WHEREAS, beginning in 1973, the Limited Partnership managed the Colony as a condominium resort hotel under the Agreement of Limited Partnership and other agreements; and



WHEREAS, the Limited Partnership filed for Chapter 11 under Federal bankruptcy codes and was converted on August 9, 2010, to Chapter 7 liquidation; and

WHEREAS, the Colony closed on August 15, 2010; and

WHEREAS, the Association was placed in possession and control of the Association property pursuant to the Bankruptcy Court order and final judgment; and

WHEREAS, the Association Board and representatives from the Town met on October 7, 2010, to discuss the future of the tourism resort development; and

WHEREAS, Section 158.138(B)(8)(a) of the Town's Zoning Code provides that a nonconforming use or structure not used for a period of one year shall be considered abandoned and, therefore, all nonconforming uses or structures within the Colony could be deemed abandoned after August 15, 2011; and

WHEREAS, the Association received a number of development proposals and worked diligently with the Town but, by April 2011, it became apparent that multiple legal restraints would prevent the Colony from reopening prior to the time of abandonment under the Town's Zoning Code; and

WHEREAS, the Association, therefore, petitioned the Town for an extension of the one-year period pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code; and

WHEREAS, the owners of the Out Parcels did not object to the requested extension; and

WHEREAS, after a public hearing on May 2, 2011, the Town Commission passed Resolution 2011-17 granting an extension of the abandonment provisions of the Zoning Code until December 31, 2012; and

WHEREAS, on July 27, 2011, the United States District Court for the Middle District of Florida (the "District Court") reversed the Bankruptcy Court's prior final judgments and remanded the matter back to the Bankruptcy Court for further deliberations; and

WHEREAS, the District Court's order raised questions about whether the Partnership or the Association was in control of the Association property and whether the Partnership was entitled to significant damages against the Association; and

WHEREAS, on October 14, 2011, the Association appealed the District Court's orders to the United States Eleventh Circuit Court of Appeals (the "Eleventh Circuit"); and

WHEREAS, on March 2, 2012, the Eleventh Circuit dismissed the appeal without prejudice; and

WHEREAS, on March 26, 2012, the Bankruptcy Trustee filed motions in the Bankruptcy Court seeking to return control of the Association property to the Partnership Trustee; and

WHEREAS, the Association had previously selected a developer of the property but that relationship was terminated in May 2012 after the District Court's and Eleventh Circuit's rulings and the subsequent motion filed by the Bankruptcy Trustee; and

WHEREAS, on July 13, 2012, the Bankruptcy Court conducted a full day hearing on this matter to consider, among other things, whether the Partnership or the Association should be in control of the Association property and the amount of damages that should be awarded to either party; and

WHEREAS, at the time of the passage of Resolution 2012-07, no orders regarding the remanded issues had been issued by the Bankruptcy Court; and

WHEREAS, any orders issued by the Bankruptcy Court are subject to appeal; and

WHEREAS, the Association believed that the tourism resort could not be redeveloped or reopened in a manner fitting to the resort prior to December 31, 2012; and

WHEREAS, on July 30, 2012, the Association submitted a request for an extension of time to comply with the regulations governing nonconforming uses and structures for the Colony; and

WHEREAS, the owners of the Out Parcels did not object to the request for an extension; and

WHEREAS, the Town Commission granted the Association's request in accordance with Resolution 2012-07; and

WHEREAS, the Association and various other entities having an interest in the Colony remain in bankruptcy with various and multiple contested bankruptcy matters; and

WHEREAS, Resolution 2012-07 granted an extension of time under certain conditions until a final determination was made concerning control of the Colony (the entire site including the Condominium Parcel and Out Parcels) either as a result of pending litigation, In re Colony Beach & Tennis Club Association, Inc., Case No. 8:08-bk-16972-KRM, Adversary Proceeding Nos. 8:08-ap-00567-KRM and 8:08-ap-00568-KRM, In re: Colony Beach & Tennis Club, Ltd., Case No.: 8:09-bk-22611-KRM, Adversary Proceeding No.: 8:10-ap-00242-KRM, or until a negotiated settlement is reached by the parties; and

WHEREAS, no final resolution or settlement has been reached; and

WHEREAS, Resolution 2012-07 is about to expire; and

WHEREAS, the Association and some, but not all, of the entities with an interest in the Colony entered into an agreement to settle and resolve their differences; and

WHEREAS, the Association held a vote of its membership to determine support of the settlement; and

WHEREAS, subsequent bankruptcy filings have requested the Bankruptcy Court enter orders confirming the settlement agreement and bankruptcy plans filed by some of the bankrupt interests within the Colony; and

WHEREAS, Colony Lender, owner of an undivided 15% interest in the Out Parcels and holder of a mortgage on an 80% undivided interest in the Out Parcels has not signed the settlement agreement and has contested approval and confirmation of the settlement agreement and bankruptcy plan; and

WHEREAS, owing to the passage of time and lack of maintenance, the vacant buildings on the Colony property have continued to deteriorate and have become a nuisance, a detriment to the neighborhood and a blight within the Town; and

WHEREAS, the existing buildings are a detriment to the redevelopment of the Colony property; and

WHEREAS, on November 17, 2013, the Association filed a petition to extend the time to maintain its nonconforming ("grandfathered") status; and

WHEREAS, the Owners of the Out Parcels do not object to the Association's request for extension or the Town extending the nonconforming status of the property; and

WHEREAS, the request for the extension is consistent with the provisions of the Zoning Code Section 158.138(B)(8)(b), which allows the Town Commission to grant an extension of the period of time a nonconforming use or structure can remain unused or vacant if the nonuse or vacancy is caused by legal restraints upon the owner or lessee; and

WHEREAS, pursuant to Section 158.138(B)(8)(b), the Town Commission may require the petitioner to decrease the nonconformity of the building or structure in one or more aspects of its nonconformity; and

WHEREAS, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be redeveloped or reopened in the future to approximately 85 units, a loss of approximately 152 units, if redevelopment is based on 14.3 acres of land currently controlled by the Association; and

WHEREAS, under single control or ownership, abandonment of the nonconforming use or structure would result in the loss of tourism units that could be redeveloped or reopened in the future to approximately 103 units, a loss of approximately 134 units, based on 17.3 acres of land; and

WHEREAS, the Town Commission has determined that multiple legal constraints have prohibited the timely redevelopment or reopening of the Colony and deems it in the public interest to grant an extension of the abandonment provision of Section 158.138(B)(8) to provide additional time to redevelop the Colony, subject to the terms and conditions as set forth below; and

WHEREAS, the extension granted herein is for tourism units and uses only as defined by the Town Zoning Code.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LONGBOAT KEY, FLORIDA, THAT:

SECTION 1. The above Whereas clauses are true and correct and are hereby ratified and confirmed.

SECTION 2. The Town Commission, pursuant to Section 158.138(B)(8)(b) of the Town's Zoning Code, hereby grants an extension of time to redevelop or use the nonconforming uses at the Colony without being deemed to have abandoned the nonconformities in accordance with Section 158.138(B)(8)(a) as provided below.

SECTION 3. An extension of time to develop the Colony property as a tourism use of 237 grandfathered tourism units is granted until April 30, 2014, subject to the conditions herein.

SECTION 4. The Colony shall:

- 1) Maintain vermin and pest control programs reviewed and approved administratively by the Town;
- 2) Secure and maintain the structures and property in compliance with Longboat Key Code of Ordinances, State, and Federal Regulations;
- 3) In anticipation of structure demolition, decommission and secure the potable water and wastewater system to the satisfaction of the Town.
- 4) Restore and maintain the landscaping, irrigation, and property on the portions of its property that are visible to the public and neighbors in a pre-shutdown condition; and
- 5) The Colony shall maintain with the Town a cash bond in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00), approved by the Bankruptcy Court, if necessary, in a form acceptable to the Town, guaranteeing the performance of conditions 1 through 4 above.

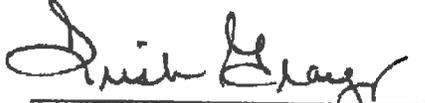
SECTION 5. If the Colony, the Association, owners of the Out Parcels, or the Town Manager seeks clarification or believes that any of the conditions set forth in Section 4 in this Resolution have not been met, that party may request a public hearing to be held before the Town Commission to determine compliance with the requirements of this Resolution. After receiving all evidence and testimony at the public hearing, if the Town Commission determines that the requirements of this Resolution have not been met, the Town Commission may take all necessary, reasonable and appropriate actions including, but not limited to, upon ninety (90) days' notice, terminating all or a portion of the extensions of time granted herein.

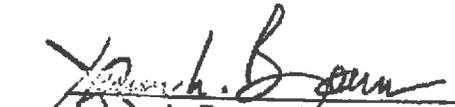
SECTION 6. In accordance with the terms of this Resolution, the subject property may be redeveloped and maintained at the existing density of 237 tourism units as tourism units are defined by the Town's Zoning Code, as may be amended.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon adoption.

Passed by the Town Commission of the Town of Longboat Key on the 11th day of December, 2013.

ATTEST:


Trish Granger, Town Clerk


James L. Brown, Mayor





End of Agenda Item